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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,172	07/03/2003	Geoffrey D.M. Wilkie	LKMP:112US	9139
7590	03/24/2005		EXAMINER	VASUDEVA, AJAY
Edward Tracy, Jr., Esq. Simpson & Simpson, PLLC 5555 Main Street Williamsville, NY 14221-5406			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/613,172	WILKIE, GEOFFREY D.M.	
	Examiner Ajay Vasudeva	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 17 February 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-28 is/are pending in the application.  
 4a) Of the above claim(s) 14 and 28 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-3,5-13,15-17 and 19-27 is/are rejected.  
 7) Claim(s) 4 and 18 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

- Claims 12, 13, 26 and 27 are drawn to Species A, marine vessels.
- Claims 14 and 28 are drawn to Species B, airships.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, 1-11 and 15-25 appear to be generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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2. During a telephone conversation with Mr. Paul Maliszewski on 3/16/2005 a provisional election was made without traverse to prosecute the invention of Species 1, claims 1-13 and 15-27. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14 and 28 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Specification***

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

- An arcuate truss assembly, as recited in claims 1 and 15. (emphasis provided)

### ***Drawings***

4. The amended drawings are objected to for the following reasons:

Applicant has stated that certain features in the replacement drawing submitted 8/30/2004, which were deemed by examiner to be new matter, have been removed in the newly submitted drawings, filed 2/17/2005. However, it is not quite clear as to what such removed features are.

Applicant is requested to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version submitted 8/30/2004, in addition to Replacement Sheets containing the corrected drawing figure(s). The marked-up copy must be clearly labeled as “**Annotated Sheets**” and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d)(1).

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Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following must be clearly shown or the feature(s) canceled from the claim(s).

- A waterborne vessel, as set forth in claims 12 and 26. The vessel must clearly be shown with respect to the body of water in which it floats.
- A submersible vessel, as set forth in claims 13 and 27. The vessel must clearly be shown with respect to the surrounding body of water in which it is submerged.

No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "**Replacement Sheet**" in the page header.(as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Claim Objections*

6. Claim 24 is objected to because of the following informalities:

After "plates", change "for" to – form --.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3, 5, 7-13, 15-17, 19, and 21-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Nedderman, Jr. (US 5,706,253 A).

Nedderman Jr. shows an arcuate truss assembly (figure 3) for varying the dimensions of a vessel hull (see figure 2) having a plurality of members [32] pivotally joined, and operatively arranged to extend and retract to vary the dimensions of the hull when the plurality of members are pivoted with respect to one another. The extension and retraction means are pneumatic or hydraulic means (*col. 3, line 18*). A plurality of plates [24] are arranged to cover the pivotal members (see figure 4). A flexible membrane [18] is connected to the hull with a watertight seal.

The limitation “the membrane … retract[s] in a diaphragm shutter like fashion” is being interpreted to mean that the membrane stretches in response to an extension of the truss members, as argued by the applicant in the response to previous rejection.

Examiner’s Observation: Applicant may note that interpretation of the limitation “vessel hull” is not limited just to a marine craft. The “vessel” can be any structure that has an internal space that is capable of enclosing another structure, such as seen in a lattice frame structure. The “hull” of the vessel is simply the external surface of the enclosure.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 6 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nedderman, Jr. in view of Bullock (US 5,499,594 A).

Nedderman Jr. shows an arcuate truss assembly having a flexible membrane.

Nedderman Jr. is silent on the flexible membrane comprising urethane.

Bullock shows a flexible membrane for a vessel hull that has varying dimensions. The membrane comprises urethane (col. 7, lines 19-24).

It would have been obvious for one skilled in the art at the time of the invention to use urethane for making the flexible membrane of Nedderman, as taught by Bullock, because it would have allowed the membrane to resist abrasion, as well as made it water impervious.

***Allowable Subject Matter***

11. Claims 4 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

12. Applicant's arguments filed 2/17/2005, with respect to the rejection(s) of claim(s) 1-3, 5-7, 9, 10, 12, 13, 15-17, 19-21, 23, 24, 26 and 27 under 35 USC 102(b) and 102(e) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

However, upon further consideration, a new ground(s) of rejection is made in view of Nedderman Jr. (US 5,706,253 A).

***Conclusion***

13. This Office action is Non-Final.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Masters ('31) shows an arcuate truss assembly for varying the dimensions of a vessel hull.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay Vasudeva whose telephone number is (703) 306-5992. The examiner can normally be reached on Monday-Friday 1:00 pm--5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ajay Vasudeva  
Examiner  
Art Unit 3617

AV

  
AJAY VASUDEVA  
PATENT EXAMINER 3/16/05